the sale note, the letter signed by Teoh, and the local council's official receipt. Their genuineness was never questioned. She called the clerk, who confirmed that she was owner of the house since June 25, 1962. The appellant, who was present and attended by counsel, elected to give no evidence.

The learned president gave judgment in favour of the appellant. In the High Court this judgment was reversed. With all respect, I think the issues raised and arguments considered in both courts below were wholly idle and irrelevant: see [1967] 1 M.L.J. 236.

The simple reason is that a judgment creditor can levy execution only on property belonging to the debtor or appearing to belong to him by reason of being in his apparent possession, not, certainly, on property belonging to any third party at the creditor's mere whim and fancy. On what grounds did the appellant claim the right to levy attachment in the instant case? None at all. He did not condescend to state them. Nor did he make any attempt to rebut the objector's claim to *bona fide* ownership by purchase. The judgment of the High Court, therefore, is right, though for reasons which, with respect, I consider beside the point. I do not agree, however, that it is also right as to costs. Where a party successfully enforces a legal right and in no way misconducts himself he is entitled to costs as of right: see *Jones* v. *Curling* [3] and *Donald Campbell & Co. Ltd.* v. *Pollak.* [4] I cannot understand how the judicial discretion was exercised in this case to deny the respondent any costs whatsoever.

This appeal is accordingly dismissed and the judgment of the High Court affirmed except as to costs. I would award all costs in the courts below to the respondent.

Appeal dismissed.

Solicitors: *Lim Kean Siew & Co.; Oo Gin Sun.*

SANIAH & ORS. v. ABDUL HAMID & ORS.

[O.C.J. (MacIntyre J.) June 29, 1967]

[Ipoh — Civil Suit Nos. 140, 141 & 142 of 1964]

Damages — Personal injuries — Multiple lacerated wounds on face — Noticeable scars and keloid formation — Fractures — Shortening of leg by 1½" — Physical disability not affecting employment — Disfigurement of face and physical disability impairing prospects of marriage.

Damages — Personal injuries — Fracture of cervical spine — Weakening of muscles of forearm — Fingers of right hand could only be partially flexed or extended — Grip and finer movement of fingers not possible within any degree of efficiency — Loss of sensation to pain or temperature.

Damages — Personal injuries — Fracture of jaw — Protosis right eye — Condition has a disfiguring effect — Eye hurts when facing strong sunlight — Impairment of prospects of marriage — Employment not effected.

The three plaintiffs who were members of a female football team sustained various degrees of personal injuries as a result of a collision between the motor car in which they were passengers and an omnibus.

The first plaintiff, Saniah, a junior agricultural assistant, 19, at the time of the accident, was hospitalized from December 16, 1961 to March 22, 1962. She suffered the following injuries: multiple lacerated wounds of the right chin and face; lacerated wound 1" long just lateral to the left eye; haematoma on the ventral surface of the left forearm; fracture of right femur; fracture of the left femur; fracture of the left clavicle; fracture of right ulna; fracture of left radius, lower end. On December 20, 1963 medical examination showed that the skin over the two linear scars on right side of the face had slightly thickened and showed some degree of keloid formation; the fractures of the thigh bones had united with a slight degree of overlapping and mal-alignment of the bones; she walked with a limp owing to the shortening of her right leg by 1½" — a condition which would later contribute towards osteoarthritis. Her physical disability had not affected her employment, but she feared that it might have diminished her prospects of promotion and she claimed that the disfigurement of her face and her physical disability had impaired her prospects of marriage.

Held: (1) damage in respect of reduced prospects of marriage fall under the head of loss of amenities. In this case Saniah's prospects of marriage had been reduced by her loss in appearance and gait as a result of the injuries sustained in the accident;

(2) taking all the facts and circumstances into consideration including reduced prospects of marriage, general damages assessed at $20,000.

The second plaintiff, a school teacher, aged 22, was hospitalized from December 16, 1961 to May 10, 1962. She suffered from: 5" long lacerated wound over the right side of the scalp; fracture of the cervical spine with marked weakness of the right upper and lower extremities and some disturbance of sensation over the left half of the body. Medical examination on October 24, 1963 showed that upper extremity of the muscles of the forearm was weak and that the fingers of the right hand could only be partially flexed or extended. Her ability to grip and the finer movement of the fingers were not possible within any degree of efficiency. As a result of the fracture of the cervical spine, the left side of her body from the shoulder down was not sensitive to pain or temperature.

Held: the limited use of the fingers of her right hand was a serious handicap to her as a teacher and the injury to her spine had permanently deprived her of the ability to participate in out door games. Although she had not complained of reduced prospects of marriage that element of damage cannot be over looked in her case. Taking all the circumstances into consideration, general damages assessed at $15,000.

The 3rd plaintiff, a telephone operator aged 22 was hospitalized from December 16, 1961 to January 21, 1962. On admission her condition and injuries were described as follows: patient was unconscious; bleeding from mouth and right ear; lacerated wound over the right side of scalp; fracture of the jaw. Medical examination showed no evidence of any disability resulting from the injuries. However, as a result of the accident her right eye had been thrust outward, the "protosis right eye" was likely to be permanent. This condition of the eye had a disfiguring effect and her right eye hurt when facing strong sunlight. She claimed that the disfiguration of her eye had impaired her prospects of marriage.

Held: her case was one in which her prospects of marriage had been reduced. Taking into consideration all the circumstances of the case, general damages assessed at $8,500.

Cases referred to:—

(1) *Lampert* v. *Eastern National Omnibus Co. Ltd.* [1954] 1 W.L.R. 1047.

(2) *Pietryga* v. *Shannon* (1955), C.A. No. 293.

(3) *Gray & Gray* v. *LaFleche* [1950] 1 W.W.R. 193.

(4) *Mann* v. *Wilkes* (1950), 57 Man. R. 465.

(5) *Rohani binti Awal* v. *Lim Lai & Ors.* [1964] M.L.J. xlv.

(6) *Wan Siew Lim* v. *Mohamed Ariffin* [1965] M.L.J. xii.

CIVIL SUIT.

N. Sharma for the plaintiffs.

Lal Harcharan Singh for the 3rd and 4th defendants.

Cur. Adv. Vult.

MacIntyre J.: Saniah binti Alang Mat Yasin, a junior agricultural assistant in the Department of Agriculture, Florie Samuel (f) a school teacher, and Jayeswari Sinnadorai (f) a telephone operator, are suing in Ipoh High Court Civil Suit Nos. 140, 141 and 142 of 1964, respectively, Abdul Hamid bin Ahmad, the 1st defendant, and Aishah binti Haji Mohamed Noor, the 2nd defendant, as administrator and administratrix, respectively, of the estate and effects of Idris bin Hamid (deceased), and Yeong Khoi, the 3rd defendant and Hup Soon Omnibus Company Ltd., the 4th defendant, as driver and owner, respectively, of an omnibus, for damages for personal injuries sustained in a collision between motor car AC 3536 and omnibus A 7954 at the 26½ mile stone, Ipoh/Teluk Anson Road (referred to in the pleadings as the Kampar/Dagong Road) on the 16th day of December 1961. For obvious reasons the three actions were, by the consent of all parties, tried together.

The undisputed facts are that at about the time of the collision the three plaintiffs were travelling in motor car AC 3536 driven by the said Idris bin Hamid (hereinafter referred to as the 'deceased') towards Kampar and omnibus A 7954 was being driven by the 3rd defendant towards Teluk Anson. The collision took place on the public road near the village of Membang Di-Awan almost at the entrance to a wooden bridge on the Kampar side.

The plaintiffs were at the time of the accident members of a female football team and were being driven by the deceased to Ipoh to participate in an inter-state football match scheduled to be played at 4 p.m. It would appear from the evidence of the plaintiffs that the car was driven at great speed and that the deceased continued to drive at great speed despite a plea by Saniah to reduce the speed.

From the Teluk Anson end of the bridge in question the road to Teluk Anson is not visible beyond a distance of 40 to 50 yards owing to a bend and high embankment. It was only after negotiating the bend at great speed that the deceased appears to have lost control of his car and to have driven it in a zig-zag fashion resulting in a collision with the omnibus near the opposite entrance to the bridge.

The claim for damages is based on alleged negligence on the part of the deceased and/or alternatively on the part of the 3rd defendant in driving his omnibus. According to the evidence of the 3rd defendant when the collision took place he had already brought his omnibus to a standstill on the correct side of the road with the nearside wheels on the grass verge. The photographs taken soon after the accident show that the stationary omnibus had all four wheels on the metalled road but was parked on the correct side with the rear part of the vehicle pointing at a slight angle towards the centre of the road while the front wheels are turned slightly towards the right. It was suggested on behalf of the plaintiffs that the position of the omnibus in the photographs showed that prior to the accident it must have been driven on the wrong side of the road. I am not prepared to draw any such inference by looking at the photographs in the absence of any corroborative evidence.

In this respect, the three plaintiffs were of no assistance to the court. While they all admitted being alarmed at the way the car was being driven they claimed to have lost consciousness before they knew what had happened.

I cannot, therefore but hold on the evidence, that the collision was the result of the sole negligence of the deceased. The action against the 3rd and 4th defendants must therefore fail, and the claim against the 1st and 2nd defendants must succeed. There remains to be considered only the question of quantum of general damages as none of the plaintiffs have claimed special damages.

At the time of the accident Saniah was 19 years of age. She was admitted into the General Hospital, Ipoh, on the 16th of December 1961 and treated as an in-patient until the 22nd of March 1962. On admission she was found to be suffering from the following injuries:—

1. Multiple lacerated wounds of the right chin and face.
2. Lacerated wound 1" long just lateral to the left eye.
3. Haematoma on the ventral surface of the left forearm.
4. Fracture of right femur.
5. Fracture of the left femur.
6. Fracture of the left clavicle.
7. Fracture of right ulna.
8. Fracture of left radius, lower end.

The medical officer who attended on her was not available to give evidence.

On the 20th of December 1963 she was seen by Mr. K. A. Menon, the consultant surgeon at the General Hospital, Ipoh. On examination he found two linear scars near the angle of the jaw on the right side. The skin over these scars had slightly thickened and showed some degree of keloid formation. He also found two scars on the left side of the face. The X-Ray photograph showed well united fractures of the upper third of both thigh bones with a slight degree of overlapping and mal-alignment of the bones. The movements of hip and knee joints were normal but she walked with a limp owing to the shortening of the right leg by 1½" — a condition which, according to Mr. Menon, could later contribute towards osteoarthritis. She now complains of pain in the knee joint and at the place of fracture of her bones when walking long distances. The pain, according to Mr. Menon, could be the result of the extra strain imposed on the right hip owing to the shortening of the right leg.

Her physical disability has not affected her employment as an agricultural assistant in government service. She still continues in her previous employment as agricultural assistant to the apparent satisfaction of her employers, although the nature of her work necessitates walking long distances over rough terrain to explain agricultural techniques to farmers. She, however, fears that her physical disability may have diminished her prospects of promotion to special grade. No independent evidence regarding service conditions was called to substantiate this point.

Saniah also claimed that the disfigurement of her face and her physical disability arising out of the injuries sustained in the accident have impaired her prospects of marriage. In consequence I had a close look at the scars and keloid formation and observed her gait. The scars and keloid formation are slight but noticeable at a glance. I am not qualified to say whether they could be effectively concealed by skilful use of cosmetics or removed by means of plastic surgery. No expert evidence was called on this point. The shortening of one leg has resulted in an awkward gait and the prospects of her gait becoming more awkward if and when osteoarthritis sets in is not a remote probability.

I have not been referred to any judgment in which the question of the reduced prospects of marriage or the principle on which damages are awarded was considered. In *Lampert* v. *Eastern National Omnibus Co. Ltd.*,[1] Hilbery J. expresses the view that where a female plaintiff was deserted by her husband because of disfigurement resulting from an accident, the loss of her husband might well be an element of the damages she might recover. This dictum was approved obiter by the Court of Appeal in *Pietryga* v. *Shannon*.[2] (See footnote 41 in *Kemp & Kemp*, 2nd Edition, Vol. 1 at page 15). But a married woman losing a husband as a result of disfigurement is not the same as an unmarried woman losing her prospects of marriage.

I have been unable to find any English decision directly on this point. However, in the *English & English* Digest (Replacement Volume 17) at page 127, two Canadian cases on the question of reduction of chances of marriage are referred to. In *Gray & Gay* v. *LaFleche* [3] the note reads:—

> "One of the principal ends of the institution of marriage is the solace and satisfaction of man and woman and physical injuries which may interfere with the conjunction of bodies may be taken into consideration in assessing damages. Since the possibility that injuries which result in the loss or malformation of limbs, or of an eye or disfiguring scars, may result in the diminution of a girl's or woman's chances of marriage, apart from questions of child bearing and motherhood, is taken into consideration in assessing damages."

In *Mann* v. *Wilkes* [4] the note reads:—

> "Where a woman was injured in a car accident and sustained horrible injuries including facial disfigurement and fractures, so that any prospect of marriage would be adversely affected:— Held: having regard to her injuries, her pain and suffering, her loss of enjoyment of life, her facial disfigurement, her loss of prospects of marriage, her present physical condition, the effect on her future earning power, and award of $20,000 for general damages would be fair and proper."

Damages in respect of reduced prospects of marriage fall under the head of loss of amenities according to the learned authors of *Kemp & Kemp*, 2nd Edition, Vol. 1 at page 15. They say and I quote:—

> "In the case of a female plaintiff serious injury or disfigurement may greatly reduce her prospects of marriage. Quite apart from other aspects of the matter which fall to be considered under the head of loss of amenities, such a matter would represent a real material loss, especially in the case of a woman who regarded marriage as her real prospective career, and who has not been educated or trained for anything else. An injury which handicaps her in the marriage market represents a real pecuniary loss."

In the instant case, the plaintiff is employed as an assistant agricultural officer in the Department of Agriculture of the Government of Malaysia and her physical disabilities have not in any substantial measure affected her career in the service of her department.

In *Rohani binti Awal* v. *Lim Lai & Ors.*[5] the High Court at Malacca awarded to the plaintiff, a 16 year old girl, a sum of $6,000 as general damages for injuries, including the fracture of the lateral condyle of the left femur which subsequently resulted in permanent disability in the movement of the leg. The disability was assessed at 40%. However, it does not appear from the report of the case which is in the form of a digest, that the question of reduced prospects of marriage was raised or considered by the court in assessing damages.

I will not hold that Saniah has lost all prospects of marriage. I will, however, hold that her prospects of marriage has been reduced by her loss in appearance and gait as a result of the injuries sustained in the accident.

In a number of other cases digested in the same page of the *Malayan Law Journal*, general damages ranging form $13,000 to $20,000 had been awarded in respect of claims for damages for disability arising from the shortening of a leg as a result of fracture of the femur or leg bones. However, in the case of *Wan Siew Lim* v. *Mohamed Ariffin*,(6) the court awarded a sum of $8,500.

Unlike as in the cases referred to, Saniah sustained a fracture of both the right and left femur. Taking all the facts and circumstances into consideration including reduced prospects of marriage, I assess general damages at $20,000.

Florie Samuel was 22 years of age at the time of the accident. She was admitted to the General Hospital, Ipoh, on the 16th of December 1961 and treated as an in-patient until the 10th of May 1962. She was found suffering from the following injuries:—

1. 5" long lacerated wound over the right side of the scalp.
2. Fracture of the cervical spine with marked weakness of the right upper and lower extremities and some disturbance of sensation over the left half of the body.

When examined by Mr. Menon on 24th October 1963, he noted that the right upper extremity of the muscles of the forearm was weak and that the fingers of the right hand could only be partially flexed or extended. Consequently, the ability to grip and the finer movement of the fingers are not possible within any degree of efficiency. As a result of the fracture of the cervical spine, the left side of the body from the shoulder down is not sensitive to pain or temperature. Up to the date of giving evidence in court her condition had not improved and in the opinion of Mr. Menon, her disabilities are likely to be permanent.

Florie is a school teacher and her disabilities have not affected her employment as such. However, the limited use of the fingers of the right hand is a serious handicap to her as a teacher and the injury to her spine has permanently deprived her of the ability to participate in out-door games. Although she has not complained of reduced prospects of marriage I am satisfied that that element of damage cannot be overlooked in her case. Taking all the circumstances into consideration, I will assess general damages at $15,000.

Jayeswari Sinnadorai was 22 years of age at the time of the accident. She was admitted into the General Hospital, Ipoh, on the 16th of December 1961 and treated as an in-patient until the 21st of January 1962. On admission her condition and injuries were described as follows:—

1. Patient was unconscious.
2. Bleeding from mouth and right ear.
3. Lacerated wound over the right side of scalp.
4. Fracture of the jaw.

She has recovered fully from her injuries and according to Mr. Menon who examined her on the 23rd of October 1963 there is no evidence of any disability resulting from the injuries. However, as a result of the accident her right eye had been thrust outward. According to the report of the Ophthamologist the "protosis right eye" is likely to be permanent. This condition of the eye has a disfiguring effect. She complains, that apart from the disfigurement, her right eye hurts when facing strong sunlight.

Jayeswari's employment as a telephone operator has not been affected by the accident. She however claims that the disfiguration of her eye has impaired her prospects of marriage. Her father gave evidence to the effect that attempts to arrange a marriage for her had failed because of the condition of her eye. After seeing her I am not prepared to hold that she has lost all prospects of marriage. I would consider her case to be one in which her prospects of marriage has been reduced. Taking into consideration all the circumstances of the case, I would assess general damages at $8,500.

There will therefore be judgment for the plaintiff against the 1st and 2nd defendants in Civil Suit No. 140 of 1964 for $20,000 and costs, judgment for the plaintiff against the same defendants in Civil Suit No. 141 of 1964 for $15,000 and costs, judgment for the plaintiff against the same defendants in Civil Suit No. 142 of 1964 for $8,500 and costs. The claim against the 3rd and 4th defendants in each of the abovementioned civil suits is dismissed with costs. I further order that the costs payable by the respective plaintiffs to the 3rd and 4th defendants be taxed and recovered from the 1st and 2nd defendants.

Judgment for the plaintiffs.

Solicitors: *N. Sharma; L. H. Singh & Co.*

QUEENSLAND INSURANCE CO. LTD. v. LEE BROTHERS ORGANISATION

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Chua J.) July 4, 1967]

[Singapore — Federal Court Civil Appeal No. Y. 22 of 1967]

Principal and Agent — Agents collecting premiums due on insurance policies — Failure to pay premiums — Claim for full premiums — Acknowledgement of debt — Application under R.S.C. 1934, O. XIV.

By specially indorsed writ the plaintiffs claimed $17,427.94 being money had and received by the defen-